

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	

**COMMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ submits these comments in response to the Second Notice of Inquiry in the above-captioned docket.² As explained herein, the cable industry supports the creation of a robust, centralized, secure, and comprehensive numbering mechanism to address the problems created for legitimate users of automated dialing technologies, including when robocalls are “made to phone numbers of consumers who had consented to receive calls but whose phone numbers have subsequently been reassigned to a new consumer.”³

As described in the *Notice*, a substantial volume of telephone numbers is reassigned each year.⁴ Once a consumer drops a number, they might not update callers to whom they previously

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving approximately 85 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing more than \$250 billion over the last two decades to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 30 million customers.

² *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, FCC 17-90, CG Dkt. No. 17-59 (rel. July 13, 2017) (“*Notice*”).

³ *Id.* ¶ 1. Among the many challenges of reassigned numbers is that they are not currently tracked in any numbering database as a telephone number category. Accordingly, there is work to be done to ensure that a properly secured and affordable solution can be created. At the same time, the financial exposures created by the Telephone Consumer Protection Act (“TCPA”), which was written before the modern cellular telephone industry was created, before local competition existed, before the modern Internet, and when fast dial-up modems offered a hundred bits per second, continues to create significant challenges throughout the industry.

⁴ *See id.* ¶ 5 (stating that “[a]pproximately 35 million telephone numbers are disconnected and aged each year,

provided consent to receive calls. This constantly changing numbering dynamic leads to callers inadvertently (and possibly unlawfully) calling non-consenting consumers who are assigned the number in the future.⁵ Currently, as the *Notice* explains, there is no comprehensive resource that can indicate, in a timely way, that a number has been reassigned.⁶ Thus, the *Notice* initiates an inquiry into how such a resource might be developed and deployed.⁷

NCTA members place calls to consumers for a variety of purposes, including calls regarding service, billing, and sales.⁸ Efforts to comply with the Telephone Consumer Protection Act (“TCPA”) involve maintaining databases of consumer information, including detailed records of consents received from consumers.⁹ Notwithstanding the significant resources the cable industry devotes to reasonable and good-faith compliance with the TCPA and its implementing regulations, they, like other wireline and wireless providers, risk TCPA liability simply by engaging in the normal conduct of their businesses, such as when marketing calls are made in good faith to consumers. The significant costs associated with TCPA litigation adversely impact consumers by way of higher prices, while stifling communications from companies to consumers that consumers want and have come to expect. Despite advocacy by NCTA and many others offering potential solutions, Commission action in this area in recent

and according to one source 100,000 numbers are reassigned by wireless carriers every day”).

⁵ See *id.* ¶¶ 1 & nn.1, 5.

⁶ See *id.* ¶ 6.

⁷ See *id.* ¶ 2.

⁸ See Letter from Stephanie Podey, Vice President & Associate General Counsel, NCTA, to Marlene Dortch, Secretary, FCC, CG Dkt. No. 02-278 at 1 (filed June 10, 2015) (“*NCTA June 2015 Letter*”); NCTA Reply Comments, CG Dkt. No. 02-278 at 1-2 (filed June 21, 2010); Comcast Comments, or, in the Alternative, Petition for Declaratory Ruling, CG Dkt. No. 02-278 at 2-3 (filed Mar. 10, 2014).

⁹ Making calls consistent with these records requires modern telephone equipment that has, for example, the ability to load approved lists of consumer telephone numbers into databases used by customer service representatives. See *NCTA June 2015 Letter* at 1; see also Time Warner Cable Comments, CG Dkt. No. 02-278 at 8 (filed Mar. 24, 2014).

years has unfortunately exacerbated these unintended consequences.¹⁰ Thus, NCTA invites the Commission to continue to explore practical and constructive approaches to TCPA compliance.

As the Commission examines solutions to this problem, NCTA recommends three principles to guide any technological approach to identify numbers that have been reassigned. First, as suggested by Commissioner O’Rielly, any such approach must be protected by “a properly constructed compliance safe harbor.”¹¹ Adoption of such a safe harbor would be appropriate here and consistent with precedent. In implementing the national do-not-call rules and establishing an analogous safe harbor, the Commission recognized that callers using the National Do Not Call Registry and making a good faith effort to comply “should not be liable for violations that result from an error.”¹² Similarly, any callers using any reassigned numbers identification mechanism consistent with the Commission’s rules should get the benefit of a safe harbor for any violations that result from an error. Indeed, calls placed to reassigned numbers are *fundamentally* made in error when the caller is attempting to reach someone who previously consented to being contacted at the reassigned number.

¹⁰ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015), *pet. for review pending sub nom ACA Int’l v. FCC*, No. 15-1211 (D.C. Cir. argued Oct. 19, 2016). NCTA previously explained to the Commission that, without notice to a caller, there is no practical way to know that a wireless number has been reassigned. See *NCTA June 2015 Letter* at 2. NCTA and others offered a number of suggestions to address the issue, including an “expected-recipient” interpretation of the TCPA, creation of a safe harbor, and other possibilities. See, e.g., *id.* As Commissioner O’Rielly points out, the need for a reassigned numbers database could be “mooted by court action or [the Commission’s] own initiative.” *Notice* at 14, Statement of Commissioner Michael O’Rielly.

¹¹ *Notice* at 14, Statement of Commissioner Michael O’Rielly; see also *Notice* ¶ 14.

¹² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 38 (2003) (“*Do-Not-Call Registry Order*”). Consistent with the approach adopted by the Federal Trade Commission, the Commission concluded that a caller would not be liable for do-not-call rule violations if it could demonstrate that: (i) it established and implemented written do-not-call rule compliance procedures; (ii) it trained its personnel in those procedures; (iii) it maintained and recorded a list of telephone numbers it could not contact; (iv) it uses a process to prevent telemarketing to any number on any list established pursuant to the rules employing a version of the registry obtained from the administrator no more than three months prior to the date any call is made, and maintains records documenting this process; and (v) any subsequent call otherwise violating the rules is the result of error. See *id.* The Commission later reduced the three-month period to a 31-day period. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 19 FCC Rcd 19215 ¶ 14 (2004).

Second, to be an effective tool, any technological approach to reassigned numbers must be robust and comprehensive.¹³ We can support a centralized, Commission-led effort to create an appropriate mechanism, rules, liability protection, cost-allocation, and enforcement of the obligations and industry-wide cooperation that will be required to address robocalling issues, including those related to reassigned numbers.¹⁴ As suggested by the *Notice*, and cognizant of the many interrelated issues service providers encounter when they are providing secure and reliable services to their customers, we believe it is important for the Commission to “oversee the quality of the data and of database operations, to restrict access to the data to appropriate entities under reasonable terms and conditions, and to ensure that the data continues to be available for as long as necessary, unlike commercial databases that might cease operations.”¹⁵ Although the TCPA “provides greater and unique protections to wireless consumers,”¹⁶ a more useful solution would be to ensure that reassigned numbers are addressed on a technologically-neutral basis such that any database or other technical solutions could accurately and securely address reassigned numbers, whether the numbers are assigned to a wireless, VoIP, or wireline platform. Of course, any such mechanism should be implemented in a manner that does not impose excessive administrative burdens or legal exposure on voice service providers, regardless of underlying technology.

Third, as the *Notice* suggests, the creation of an effective and useful reassigned numbering tool raises questions of eligibility for access to the information, limits on its use, and

¹³ Resources available to identify number reassignments today are incomplete and do not provide information in a timely manner. *See Notice* ¶ 6.

¹⁴ *See id.* ¶ 16. As the *Notice* points out, this is consistent with the Commission’s efforts to facilitate Local Number Portability. *See id.* However, we urge the Commission to avoid creation of a database that is profit-based, by looking to the National Do Not Call Registry as a model.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 12.

how best to protect network security, consumer privacy, and to prevent unintended consequences.¹⁷ The Commission should adopt rules requiring entities who wish to access any such tools to register with the Commission or third party administrator;¹⁸ to certify that the information will be used only for purposes of TCPA compliance, and not for other commercial purposes; to protect the confidentiality of any such information where competitively sensitive information may be revealed; and to acknowledge that any unlawful use of the information would subject the user to enforcement, including forfeitures.¹⁹ Given that any such mechanism would necessarily include telephone numbers (and possibly other information such as names), the Commission must carefully consider how best to preserve the privacy rights of consumers who can be reached at those numbers.

Ultimately, if properly constructed, the potential benefits of a comprehensive reassigned numbers mechanism are threefold: it could minimize or eliminate robocalls to consumers with reassigned numbers; it could avoid depriving consumers of calls that they wish to receive; and as part of a broader comprehensive and integrated examination of the interrelated issues of

¹⁷ See *id.* ¶¶ 24, 26, 28.

¹⁸ The first time an entity accesses the National Do Not Call Registry, it must provide certain identifying information, such as name and address, contact person, and contact person's telephone number and address. If an entity is accessing the registry on behalf of a different client entity, it must also identify that client. See *Do-Not-Call Registry Order* ¶ 59.

¹⁹ The Commission followed a similar approach in providing access to the National Do Not Call Registry. There, the Commission concluded that “no person or entity may sell, rent, lease, purchase, or use the national do-not-call database for any purpose except compliance with section 227 and any such state or federal law to prevent telephone solicitations to telephone numbers on such list.” *Do-Not-Call Registry Order* ¶ 61. The Commission also prohibited “any entity from purchasing this list from any entity other than the national do-not-call administrator or dispensing the list to any entity that has not paid the required fee to the administrator.” *Id.*

numbering administration, it could mitigate costly and counterproductive liability under the TCPA for entities that inadvertently place calls to reassigned numbers.

Respectfully submitted,

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